the protection of the courts in civil causes; and it is but just that one who has brought an unsuccessful suit, or who has resisted a legal claim, should be required to pay the costs. PARSONS ON COSTS, 3. Similarly, the institution of criminal proceedings by an individual, when allowed, is a subject for proper regulation. It may be objected that the prosecuting witness is not a party to the suit, and so the analogy fails; but it would seem that the civil suitor, in so far as the question of the taxation of costs against him is concerned, has no more brought himself before the court than has the prosecuting witness who files his complaint. But though the conditions attached to an appeal to the courts in matters of private right cannot be extended so as virtually to deprive the suitor of the courts' protection, the imposition of conditions on which the institution of criminal suits by individuals is permitted, finds its only limit in the same policy which moves the legislature to allow such a proceeding.

CONTRACTS TO EMPLOY ONLY UNION LABOR. — A novel situation presented to the New York Supreme Court opens a wide field for discussion. A contractor had agreed to employ members of the plaintiff union and no others on all jobs of stone work of a certain character. This he failed to do, and the plaintiff moved for an injunction *pendente lite* to restrain him from employing other stone workers. The motion was dismissed on the ground that the plaintiff's damage was merely the loss of wages to its members and could be adequately estimated at law. *Stone, etc., Union* v. *Russell*, 38 N. Y. Misc. 513.

This statement as to the plaintiff's damages is certainly inaccurate. Whether or no the union does suffer a loss exactly corresponding to the loss of its members in wages — at least a doubtful question — it does lose prestige in addition. As the chief object of the agreement not to employ men outside the plaintiff union was to increase the union's influence and prestige, to allow the defendant to break this contract is completely to defeat the object for which it was made, and to cause injury for which a money compensation is quite inadequate. Of course the obvious retort is that in the analogous cases of libel and slander pecuniary compensation for injured reputation is considered sufficient. This is true, but the fact remains that oftentimes in reality it is *not* sufficient. However, after the holdings in *Marlin Fire Arms Co.* v. *Shields*, 171 N. Y. 384, and *Roberson* v. *Rochester, etc., Co.*, 171 N. Y. 538, it was not open to this court to declare, with any show of consistency, that damage to a union's prestige could not be adequately recompensed at law. Another point in the plaintiff's favor is that an express negative stipulation was broken. Though this fact could hardly sway an American court, it would be well-nigh decisive in England. *Donnell* v. *Bennett*, L. R. 22 Ch. D. 835. But see 15 HARV. L. REV. 480.

Strong as the above considerations appear, the reasons on the other side are even more convincing. First, the unanimous weight of authority has held this sort of injury to be easily ascertainable and capable of adequate compensation at law. Second, there was nothing in the nature of the plaintiff's services or in the employment offered by the defendant so peculiar or unique as to demand the aid of equity. Third, a sound public policy requires that the parties be left to their rights at law. Such a contract as this has a direct tendency to stifle competition; and though it could hardly be considered illegal as in restraint of trade, it is just the sort of dangerous agree-

ment which equity should refuse to enforce specifically. Its purpose was to coerce other workingmen to join the union, thus interfering with their right to dispose of their labor to any one who was willing to employ. Every act which tends to limit the exercise of this right militates against the spirit of our government and is, *pro tanto*, detrimental to the public weal. See *Plant* v. *Woods*, 176 Mass. 492. As an attempt to compel unionizing, it is a contract which would be no defense to an action by a workman discharged in obedience to the agreement, whether or no his discharge included a breach of an employment contract. *Curran* v. *Galen*, 152 N. Y. 33; *Lucke* v. *Assembly*, 77 Md. 396. And see *Read* v. *Friendly Society, etc.*, 47 Sol. Jour. 23. Obviously this type of restrictive contract is not regarded with favor by the courts, and equity does wisely in refusing its extraordinary relief of specific performance. The result of the principal case therefore is sound, though the reasons advanced by the court are not in themselves conclusive.

TENANT'S DECLARATIONS AS AFFECTING LANDLORD'S ACQUISITION OF TITLE BY ADVERSE POSSESSION. — A mortgagee of land to which the mortgagor had had no title foreclosed his mortgage, but took possession only through a tenant who entered under a verbal agreement to purchase. The tenant held for twenty years without carrying out this agreement, freely admitting to all the world in the meantime that the plaintiff was in fact the true owner. Subsequently the mortgagee conveyed to the defendant. It was held that the statements of the tenant were admissible in evidence in a suit by the true owner for the recovery of the land. *Walsh* v. *Wheelwright*, 96 Me. 174. The exact point raised in the case seems to be new. The court bases its decision largely upon the argument that the tenant's statements were admissible as being against his pecuniary interest. It is suggested, however, that the evidence might have been admitted without placing it under one of the exceptions to the rule against hearsay. In fact, the declarations of one in possession of land as to the character of the possession may be regarded as original evidence, for the reason that the very question in issue is whether there has been possession for the statutory period under a claim of right. Accordingly, testimony as to the claim made by the occupant is no less original evidence than is testimony as to the possession itself. GREENL. Ev., 16th ed., §§ 108, 152 c, 189. Consequently, such statements are admitted when they are in the interest of the declarant as well as when they are against his interest; and it need not be shown that the declarant is dead or incapable of appearing as a witness. *Webb* v. *Richardson*, 42 Vt. 465; *Smith* v. *Putnam*, 62 N. H. 369.

So far as the technical rules of evidence are concerned, then, the statements of the tenant seem equally admissible whether they are considered original evidence or brought within an exception to the rule against hearsay. A more serious objection is raised, however, by the rule of substantive law that a tenant is estopped to deny his landlord's title. *Granger* v. *Parker*, 137 Mass. 228. It follows from this rule that if a tenant put in possession by a landlord who has no title occupies adversely to the true owner for the statutory period, the title which he gains accrues to the landlord; for the true owner is barred by the statute, and the tenant is estopped to claim title as against his landlord. Again, if the tenant wrongfully attorns to a stranger without bringing the fact to the landlord's notice, it would seem that the stranger can acquire no title by the tenant's possession, since he derives his